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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

NO. 848

OSCAR HOLT and WILLIAM R. DAHL,
Petitioners (Plaintiffs-Appellants Below),

vs.

BARNESVILLE FARMERS ELEVATOR COMPANY, a corporation,
Respondent (Defendant-Appellee Below).

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Opinions of the United States District Court, District of Minnesota, Sixth Division, and Eighth Circuit Court of Appeals.

The opinion of the District Court is reported in 52 Fed. Supp. 468, and appears in this record at pages 147 to 163. The opinion of the Circuit Court of Appeals of the Eighth Circuit is reported in 145 Fed. (2d) 250, (Advance Sheet

December 25, 1944), and appears in this record at pages 194 to 200.

These opinions effectively answer the petition and brief of the petitioners.

RESPONDENT'S POINTS

I. **No valid ground has been shown for the Writ.**

II. **No conflict exists between the decision below and that of any other Circuit Court of Appeals nor with previous decisions of this Court.**

STATEMENT OF THE CASE

The respondent is and was a corporation organized and existing under the cooperative laws of the State of Minnesota. It is engaged in operating a grain elevator under license from the State of Minnesota. It stores, grades, mixes, buys and sells grain. It also purchases coal, twine, seed, farm machinery and parts which are sold locally to its patrons and members or to residents of the Village of Barnesville, Minnesota, where its business is located. All of its stockholders are farmers or persons who own the farms on which grain is produced. Each stockholder is limited to one vote at the meetings of the stockholders. Likewise, its non-stockholder patrons are producers of agricultural products, including grain, and number approximately 500. Dividends on stock not to exceed 6 per cent per annum are paid to the stockholders. Patronage refunds are paid to all patrons who deliver grain. The amount of the patronage refund varies from year to year.

In addition to the grain business, the association purchases coal, twine, seeds, farm machinery and parts. These are sold locally to its stockholders and patrons or to the residents of Barnesville. The heaviest movement of grain occurs during the months of August and September. Grain is received every month in the year, however. The grain that is handled by the respondent is delivered from farms to the elevator by way of trucks, trailers, wagons drawn by tractors and in sacks by automobile.

The respondent also does considerable custom cleaning of grain in the spring months for seed purposes for its patrons and stores grain for the Federal Government under a contract with the Commodity Credit Corporation.

The respondent is located in a farming community and in a predominent grain producing area. It is served by three trunk highways. Ninety-eight per cent of the grain received by the elevator is delivered from within fifteen miles of the elevator.

The grain which was shipped by the respondent was sold either on the Minneapolis or Duluth, Minnesota, Grain Exchange. The railroad cars were routed from Barnesville to Minneapolis, and were held at St. Cloud, Minnesota, pursuant to shipping instructions to hold at that point. The grain was held there until after its sale, at which time the purchaser took control. Future movement of the car of grain was subject to the purchaser's order. The freight charges from Barnesville to Minneapolis or Duluth, depending where the sale took place, were paid by the respondent. Further freight charges were paid by the purchaser of the grain. Remittance to the respondent is made by the member of the Exchange selling the grain for

the purchase price less cost of sales, freight charges and inspection costs.

The two petitioners for all practical purposes performed the same duties in their work for the respondent. When the grain arrived at the elevator they handled and prepared the grain for market, they weighed, tested and graded it and dumped it into the pits. A weight ticket was given to the person depositing or selling the grain showing the gross weight of the grain, the amount of dockage and tare and the grain's net weight. They would then elevate the grain by mechanical equipment to the elevator bins. From the bins the employees would put the grain through the mechanical equipment for cleaning and then return it to the elevator bins in accordance with its grade. They also transferred the grain by mechanical equipment from one bin to another. They also mixed the grain and loaded it into cars for shipment. They also helped dry and store it and handled the storage grain.

The sale of coal, twine, seed and farm machinery business was all local and at retail.

It is difficult to give the Court accurate page numbers of the record for verification of the foregoing statement of the case. No copy of the record has been furnished us. The copy of the index furnished us is typewritten and it appears therefrom that the testimony of the various witnesses whose testimony covers these facts commences at page 16 and continues to page 140. The trial Court in its memorandum decision gave a complete resume of the pertinent facts and according to the index this decision appears at page 147 of the record. The opinion of the Circuit Court of Appeals which appears at page 194 of the record also details these facts.

The trial Court held that the employees of the respondent were engaged in the weighing, binning, cleaning, grading, loading for shipment, and storing of grain and therefore were within the statutory exemption of employees, handling, storing and preparing for market agricultural commodities from minimum and overtime provisions of the Fair Labor Standards Act of 1938, by virtue of Section 213(a)(10).

Appeal was taken by petitioners to the Circuit Court of Appeals of the Eighth Circuit. Petitioners in that appeal asserted as here that the type of work performed by the petitioners for the respondent was not covered by the exemption granted under Section 213(a)(10) of the Act, and that irrespective of any definition promulgated by the Administrator of the Wage and Hour Act they were entitled to recover. The Circuit Court of Appeals rejected petitioners' argument on that phase of the case, but because of the decision of this Court in *Addison v. Holly Hill Fruit Products, Inc.*, 322 U. S. 607; 88 L. Ed. 1123 (decided while the appeal was pending) it reversed and remanded the case to the trial Court for further proceedings in accordance with that decision.

ARGUMENT

I.

No valid ground has been shown for the Writ.

Pertinent Federal Statutes and Regulations of the Administrator.

Minimum Wages—29 U. S. C. A. 479, Sec. 206:

> "(a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—
>
> "(1) during the first year from the effective date of this section, not less than 25 cents an hour,
>
> "(2) during the next six years from such date, not less than 30 cents an hour,"

Maximum Hours—29 U. S. C. A. 485, Sec. 207:

> "(a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—
>
> "(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,
>
> "(2) for a workweek longer than forty-two hours during the second year from such date, or
>
> "(3) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

Section 213(a)(10) (29 U. S. C. A. 509):

"(a) The provisions of sections 206 and 207 of this title shall not apply with respect * * * (10) to any individual employed within the area of production (as defined by the Administrator), engaged in handling, packing, storing, * * * preparing in their raw or natural state * * * of agricultural or horticultural commodities for market * * *."

Interpretive Bulletin No. 14, August 21, 1939, Administrator, Wage and Hour Division. Exemption of agriculture and exemptions for processing agricultural commodities under Fair Labor Standards Act. Wage and Hour Manual (1942) page 404:

"Handling (Par. 26)

"The operations included in this term appear to be those physical operations customarily performed in obtaining agricultural or horticultural commodities from producers' farms, transporting them to and receiving them at the establishment, weighing them or otherwise determining on what basis the producer is to be paid, placing them in the establishment where further operations are to be performed, and delivering the commodities to warehouses. Specifically, these operations include loading the commodities on trucks, wagons, etc., in producers' fields or at concentration points, transporting them to the establishment, receiving and unloading them at the establishment, counting or weighing the commodities, assembling, binning, piling, or stacking them in the establishment, moving them from one place to another in the establishment, moving the bags, boxes, cases, barrels, bales, coops, and other loaded containers to wagons, trucks, railroad cars or other conveyances, and transporting the commodities away from the establishment."

The two points stressed by the appellants are (1) the petitioners were engaged in commerce and the provisions of Sections 206 and 207 apply to them regardless of the character of the work they were doing, and (2) the appellants were engaged in commerce and were not engaged in the handling, packing, storing or preparing in their raw or natural state agricultural commodities for market within the meaning of Section 213(a)(10).

We believe both of these arguments are without merit. The Fair Labor Standards Act covers employees engaged in commerce or in the production of goods for commerce. It also provides certain specified exemptions of employees even though the employee be engaged in commerce or in the production of goods for commerce. If the employee is not so engaged, then the Act does not apply. Equally true is the fact that if the employee is within the exemptions granted by the Act, Sections 206 and 207 do not apply, and no determination of whether the employee is engaged in commerce or in the production of goods is necessary.

To us no discussion seems necessary for the argument that the petitioners were engaged in the actions specified in Section 213(a)(10). The language of the exemption provision of the Act is clear under all ordinary construction of the English language. It is equally clear that the petitioners were performing the work described in the section. The fact is that the Administrator and any Court which has dealt with analogous situations have held the kind of work done by these petitioners to be that which is described in Section 213(a)(10).

Fleming v. Farmers Peanut Company, 128 Fed. (2d) 404, CCA 5 (1942);

Remington v. Shaw, 52 Fed. Supp. 465, U. S. D. C. (1942);

Addison v. Holly Hill Fruit Products, Inc., 322 U. S. 607, 88 L. Ed. 1123;

Bulletin No. 14, August 21, 1939, Wage & Hour Division.

Petitioners argue that Paragraphs 26, 28 and 33 of Interpretive Bulletin No. 14 hereinbefore quoted do not deal with the provisions of Section 213(a)(10) and that the trial Court and Circuit Court of Appeals erred in relying upon these paragraphs to support the conclusion that the Administrator had determined that petitioners were performing the work described in the exemption provision of the Act. There is no basis for this contention. In the introduction to said Bulletin No. 14, the Administrator states:

> "Section 13(a)(6) renders the wage and hour provisions of the Act inapplicable to employees employed in 'agriculture' as that term is defined in Section 3(f); section 7(c) renders the hour provisions of the Act totally or partially inapplicable to employees of employers engaged in certain types of operations upon agricultural or horticultural commodities, dairy products, poultry or livestock; and section 13(a)(10) renders the wage and hour provisions of the Act inapplicable to persons employed in certain types of activities with respect to agricultural or horticultural commodities or employed in making dairy products. This bulletin will set forth the construction of these sections which will guide the Administrator in the performance of his administrative duties unless he is directed otherwise by authoritative rulings of the

courts or unless he shall subsequently decide that his prior interpretation is incorrect."

Clearly the Administrator, in the paragraphs mentioned, was considering Section 213(a)(10). The arguments advanced by the petitioners are answered both by the terms of the Fair Labor Standards Act and by the Administrator's interpretations. They are concluded by the decision of this Court in *Addison v. Holly Hill Fruit Products, Inc., supra.*

II.

No conflict exists between the decision below and that of any other Circuit Court of Appeals nor with previous decisions of this Court.

The petitioners assert that the decision of the Circuit Court of Appeals for the Eighth Circuit is an interpretation and application of the Fair Labor Standards Act in conflict with other decisions of this Court. A reading of the cases cited by petitioners does not bear out the argument. The decision of the Court is in accord with the principles laid down in the *Addison* case.

CONCLUSION

Petitioners have failed to show any valid ground for the writ. There is no conflict with other decisions of this Court or in the Circuit Courts of Appeals. No question of importance is presented or suggested that requires a decision of this Court. The petition should be denied.

Respectfully submitted,

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